Calendar No. 237

98TH CONGRESS, 1st Session } SENATE { REPORT No. 98-150

AMENDING SECTION 1 OF THE ACT OF JUNE 5, 1920, AS AMENDED, TO AUTHORIZE THE SECRETARY OF COMMERCE TO SETTLE CLAIMS FOR DAMAGES OF LESS THAN $2,500 ARISING BY REASON OF ACTS FOR WHICH THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION SHALL BE FOUND TO BE RESPONSIBLE

JUNE 10 (legislative day, JUNE 6), 1983.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 969]

The Committee on the Judiciary, to which was referred the bill S. 969 to amend section 1 of the act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration shall be found to be responsible, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE

The purpose of the proposed legislation is to amend section 1 of the act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration is responsible.

II. STATEMENT

The bill, S. 969, was introduced as recommended by the Department of Commerce in a recommendation to the Congress dated July 6, 1977, and is identical to the bill, H.R. 1029 which passed the House of Representatives and was reported out of the Senate Judiciary Committee in the 97th Congress, and H.R. 234, in the 96th Congress, which was the subject of a favorable report by the Department to the committee dated June 9, 1980.

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Under existing law, the Secretary of Commerce has the authority (under 33 U.S.C. 853) to settle claims up to $500 arising by reason of acts for which the National Ocean Survey (an agency of the National Oceanic and Atmospheric Administration) of the Department of Commerce shall be found to be responsible. This authority does not extend to a negligent or wrongful act or omission of a Government employee acting within the scope of his employment which would already be covered under the Federal Tort Claims Act (28 U.S.C. 2671–80). The purpose of S. 969 is twofold: First, it would make clear that 33 U.S.C. 853 is applicable to all NOAA activities not merely to those of the National Ocean Survey. Second, it would increase the maximum dollar amount of authorized settlements from $500 to $2,500.

Both of these changes in existing law are noncontroversial. The Congressional Budget Office reports that enactment of this legislation would result in no significant costs or savings to the Federal Government. The Office of Management and Budget has no objection to this legislation initiated by the Department of Commerce.

The bill, in increasing the dollar amount for authorized settlements from $500 to $2,500 will provide the authority to settle claims arising from the many diversified scientific endeavors and experiments of that Administration. As is pointed out in the material submitted to the committee by the Department, the settlements can be made where the claim arose from damage clearly caused by activities of the National Oceanic and Atmospheric Administration and the Government has a moral obligation to compensate the injury even though there may be an absence of negligence. The examples of such activities as described in the report of the Department of Commerce included weather instrument operations such as the radiosonde. This is a device that is sent into the atmosphere by balloon which, after reaching 5 or 6 miles in altitude, is returned to the ground by parachute. The radiosonde is a plastic cased instrument weighing about 3 pounds. In most instances, the instrument reaches the Earth surface without incident, and many of them are recovered. As a free-falling object, however, there is a possibility that the instrument could frighten domestic animals, or have other effects such as colliding with vehicles.

It was also pointed out that during marine surveys, coastal hydrographic ships operate in areas where fishing occurs and, despite precautions, fishing nets, lobster pots, or other fishing gear may be damaged.

The National Earth Satellite Service of NOAA has command and data acquisition stations at Gilmore Creek, Alaska, and Wallops Island, Va. The launching of satellites for atmospheric observations from these stations is accomplished in collaboration with the National Aeronautics and Space Administration [NASA]. However, NOAA personnel, facilities and equipments are involved. Satellite launchings always have the potential for damaging their operational sites and contiguous areas.

In addition to the foregoing, there may be damage to private property by triangulation and survey field parties. Most of the work of such parties involves using privately owned land to which access is obtained by established procedures. A site may be used for several

months and it is possible that damage could be done to the land and its appurtenances.

The committee recognizes that the existing language in section 853 of title 33 of the United States Code presently providing for the settlement of claims up to $500 has performed a valuable function over the years since enactment in 1920 to provide compensation to persons injured from activities similar to those outlined above. The increase of that authority to the amount of $2,500 is a realistic increase in view of current costs which can be expected in the event of damage claims. Further the activities of the National Oceanic and Atmospheric Administration as exemplified by the examples outlined in this report and in the material appended to the report submitted by the Department, are of a unique nature and would give rise to claims which could be settled expeditiously under the authority provided in this bill.

It is recommended that the bill be considered favorably.

The following letter was received in a previous Congress concerning H.R. 1029, an identical bill to S. 969.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., May 5, 1982.

Re H.R. 1029, amendment to 33 U.S.C. 853.

MS. LINDA NERSESIAN,
Staff Counsel, Senate Judiciary Committee, Subcommittee on Agency Administration, Washington, D.C.

DEAR MS. NERSESIAN: The NOAA Congressional Affairs Office has asked me to provide you with some background concerning the above referenced pending bill. It is my understanding that the H.R. 1029 passed the House on October 5, 1981, and is presently before your subcommittee.

Under existing law, the Secretary of Commerce has the authority under 33 U.S.C. 853 to settle claims up to $500 arising by reason of acts for which the National Ocean Survey (an agency of the National Oceanic and Atmospheric Administration) of the Department of Commerce shall be found to be responsible. This authority does not extend to a negligent or wrongful act or a mission of a Government employee acting within the scope of his employment which would already be covered under the Federal Tort Claims Act (28 U.S.C. 2671-80). The purpose of H.R. 1029 is twofold. First, it would make clear that 33 U.S.C. 853 is applicable to all NOAA activities, not merely to those of the National Ocean Survey. Second, it would increase the maximum dollar amount of authorized settlements from $500 to $2,500.

The Federal Torts Claims Act [FTCA] was passed in 1946 and it provided for the first time general administrative and judicial remedies to those who suffer injury or damage as a result of the negligence or misconduct of employees of the U.S. Government. Prior to this time the only remedy available to the victims of Government negligence was to try to have a private claim bill introduced in Congress. There were, however, a number of specialized statutory authorities

already allowing payment of claims for Government activities. These included, inter alia, the Suits in Admiralty Act (46 U.S.C. 741, et seq.) (1929), the Public Vessels Act (46 U.S.C. 781, et seq.) (1925), the Coast Guard Claims Act (14 U.S.C. 645) (1941), Administration of National Forests (16 U.S.C. 574) (1930), National Park Service (16 U.S.C. 17f) (1930), Claims Involving the FBI (31 U.S.C. 2241) (1934), the Military Claims Act (5 Stat. 372) (1943), and the Coast and Geodetic Survey (33 U.S.C. 853) (1920).

The FTCA was not intended to be a codification of these statutes. While it did supersede some of them, they were not all replaced and many remain on the books today. The last section of the FTCA contained both a repealing and savings clause. This section repealed all existing provisions of law authorizing any Federal agency to adjust claims which are cognizable under the administrative settlement provisions of the act. Provisions of law authorizing the adjustment of claims not cognizable under this portion of the FTCA remained unaffected as to such claims. This section is 424 of the Legislative Reorganization Act, 60 Stat. 846, and is not set forth in the United States Code today. Since the FTCA provided a remedy only as a result of a "negligent or wrongful act or omission," it did not repeal 33 U.S.C. 853, the Coast and Geodetic Survey claims authority, because under this authority one only need show an act "for which the Coast and Geodetic Survey shall be found to be responsible." Only those negligent or wrongful acts for which the Coast and Geodetic Survey was responsible were no longer within the purview of 33 U.S.C. 853. Other acts which cause damage or injury but where there was no negligent or wrongful act, remained and still remain cognizable.

Examples of the different types of claims cognizable under the FTCA received by NOAA today would be damage or injury caused by automobile accident, defects or dangerous conditions on NOAA property, or negligent weather forecasting, to name a few. There are certain activities, however, which, while damages may result therefrom, cannot really be considered negligent or wrongful. Examples of these would be the operation of weather instruments and satellites, damage from triangulation stations, and cloud seeding. In the past we have had to settle such claims in excess of $500 by finding a color of negligence or a wrongful act under the FTCA. Findings of this sort are difficult to reach. Defining the launching of a radiosonde as a "wrongful act," as has been done in the past, is stretching the intent of the law. Also, in areas of this sort and with such experimental programs as cloud-seeding, to have to define these activities in terms of negligence sets undesirable precedents. The increase in settlement authority to $2,500 will allow us to settle, if appropriate, almost every claim of this sort received where we believe we have a moral obligation to do so. It is important that we be able to compensate members of the public for damage done even though negligence was not involved.

As mentioned earlier, other comparable statutes have been in existence for years. NASA has a similar statute (42 U.S.C. 2473(b)(13)) which allows it "to consider, ascertain, adjust, determine, settle, and pay * * * any claim for $5,000 or less against the United States for

bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of the Administration's functions. * * *" No negligent or wrongful act is needed to pay such a claim. Similarly, the Military Claims Act (10 U.S.C. 2733) provides an administrative remedy of $25,000 for claims of property damage, personal injury, or death caused as an incident to the noncombat activities of the military departments. The claimant need not show negligence, wrong, or fault. All that is needed, as in 33 U.S.C. 853, is a showing of causation and damages. What we are proposing to do, as these other statutes have done throughout the years, is simply increase the dollar limit of 33 U.S.C. 853 to the more appropriate level of $2,500, considering that the existing limit of $500 was established in 1920.

As you know, the Coast and Geodetic Survey was absorbed into ESSA and later its functions were assumed by the National Ocean Survey within NOAA. The authority of the Director, Coast and Geodetic Survey, under 33 U.S.C. 853 was assumed by the Secretary of Commerce and in turn delegated to the Administrator of NOAA. However, the law still refers to the functions of the Coast and Geodetic Survey and we want to make it clear that the law refers to all NOAA activities, and not just those exercised by the National Ocean Survey. No other comparable claims act restricts itself to one segment of an agency's activities. While we have had no problems in this regard in the past, since the statute was being amended we felt it appropriate to update its language as well.

The mechanics of the claims process under 33 U.S.C. 853 will remain the same as it has been, which is similar to what we do with FTCA claims. The claimant submits a standard form 95 with documentation and if the claims is approved we have him sign a voucher and then payment is authorized. Increasing the limit to $2,500 will not require any increase in appropriations or cause any administrative burden since 33 U.S.C. claims are relatively infrequent.

Please let me know if I can provide additional information concerning this matter. I can be reached on 377–5397.

Sincerely,

M. TIMOTHY CONNER,
Staff Attorney.

GENERAL COUNSEL OF THE
U.S. DEPARTMENT OF COMMERCE,
Washington, D.C., August 6, 1982.

Hon. CHARLES GRASSLEY,
Chairman, Subcommittee on Agency Administration, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department concerning H.R. 1029, a House-passed bill to amend section 1 of the act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration is responsible.

Under existing law, the Secretary of Commerce has the authority under 33 U.S.C. 853 to settle claims up to $500 arising by reason of

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acts for which the National Ocean Survey (an agency of the National Oceanic and Atmospheric Administration) of the Department of Commerce shall be found to be responsible. The purpose of H.R. 1029 is twofold. First, it would make clear that 33 U.S.C. 853 is applicable to all NOAA activities, and not merely to those of the National Ocean Survey. Second, it would increase the maximum dollar amount of authorized settlements from $500 to $2,500.

The Department of Commerce supports enactment of this legislation.

The existing language in section 853 of title 33 of the United States Code presently providing for the settlement of claims up to $500 has performed a valuable function over the years since its enactment in 1920. The increase of that authority to the amount of $2,500 is a realistic increase in view of current costs which can be expected in the event of damage claims. Further the activities of the National Oceanic and Atmospheric Administration are of a unique nature which gives rise to claims which could be settled expeditiously under the authority provided in this bill.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this letter to the Congress from the standpoint of the administration's program.

Sincerely,

IRVING P. MARGULIES
(For Sherman E. Unger, General Counsel).

III. SUBCOMMITTEE ACTION

The Subcommittee on Administrative Practice and Procedure voted unanimously in favor of S. 969 without amendments and reported it to the full committee April 21, 1983.

IV. COMMITTEE ACTION

The Committee on the Judiciary voted in favor of S. 969 and ordered the bill reported to the full Senate without amendment on May 2, 1983.

V. REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, it is hereby stated that the bill will have no additional direct regulatory impact. After due consideration, the committee has determined that the changes in existing law contained in this bill will not increase or diminish any present regulatory responsibility of the U.S. Department of Justice or any other Department which exercises a law enforcement responsibility.

VI. CHANGES IN EXISTING LAW MADE BY S. 969 AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be deleted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

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TITLE 33, UNITED STATES CODE

CHAPTER 17—NATIONAL OCEAN SURVEY

§ 853. Power of director to settle claims

[The Director of the Coast and Geodetic Survey, subject to the approval of the Secretary of Commerce, is authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed $500, occasioned, subsequent to June 5, 1920, by acts for which the Coast and Geodetic Survey shall be found to be responsible.]

The Secretary of Commerce is authorized to consider, ascertain, adjust, and determine all claims for damages, where the amount of the claim does not exceed $2,500, occasioned, subsequent to June 5, 1920, by acts for which the National Oceanic and Atmospheric Administration is responsible.

VII. Cost Estimate

In accordance with section 252(a) of the Legislative Reorganization Act, 2 U.S.C. 190(j), the committee estimates that there will be no significant costs or savings to the Federal Government and adopts the cost estimate prepared by the Congressional Budget Office as follows:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., May 9, 1983.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed S. 969, a bill to amend section I of the act of June 5, 1920, as amended, to authorize the Secretary of Commerce to settle claims for damages of less than $2,500 arising by reason of acts for which the National Oceanic and Atmospheric Administration is responsible, as ordered reported by the Senate Committee on the Judiciary, May 2, 1983.

Based on information from the Department of Commerce, it is expected that enactment of this legislation would require no changes in staffing levels and result in no significant costs or savings to the Federal Government.

Enactment of this bill would not affect the budgets of State and local governments.

On April 11, 1983, CBO prepared a cost estimate for H.R. 594, the House companion version of this bill. The language in that bill is identical to that of S. 969.

Should the committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Alice M. Rivlin, *Director.*

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